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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,188	09/12/2003	Linda S. Goertz	P-8009	8300

7590

08/30/2005

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EXAMINER

MCKANE, ELIZABETH L

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 08/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/661,188

Applicant(s)

GOERTZ ET AL.

Examiner

Leigh McKane

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 6-8 is/are rejected.
- 7) ☒ Claim(s) 4 and 5 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

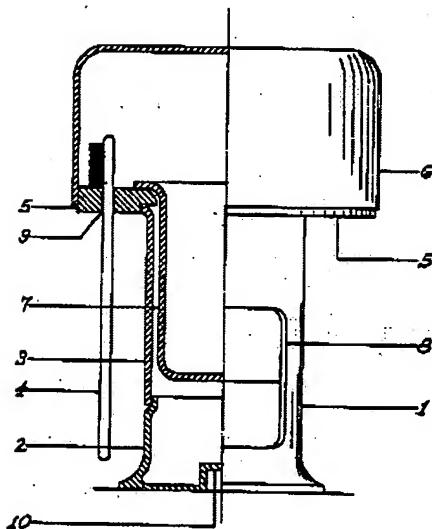
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Wilkinson (U.S. 4,927,011).

Wilkinson teaches a dental hygiene holding apparatus including a container 3 having a flat lower surface 2 and an upper opening large enough to receive oral hygiene device

therethrough. The apparatus further includes a container 7 removably suspended in the upper opening. A generally horizontal extension 5 is sandwiched between the upper opening of the container 4 and the container 7, covering the upper opening of container 3. This extension 5 includes holes 9 for suspension of dental appliances. A lid 6 seals the container 7, covers the toothbrushes as suspended, and allows fresh air to circulate (fresh air enters through aperture



8). A dental floss container (oral hygiene storage unit) can be stored within the device. See col.2, lines 8-16. It is noted that the intended use of the container 7 does not patentably distinguish the instant invention from that of Wilkinson.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
5. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wilkinson.

With respect to the material from which the container and lid are formed, it is generally accepted to be obvious to one of ordinary skill in the art to choose an appropriate and well-known material, where the results are not unexpected. One would have found it obvious to choose hand-blown glass for purposes of aesthetics and ease of cleaning.

6. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilkinson in view of Collins (U.S. 1,507,466).

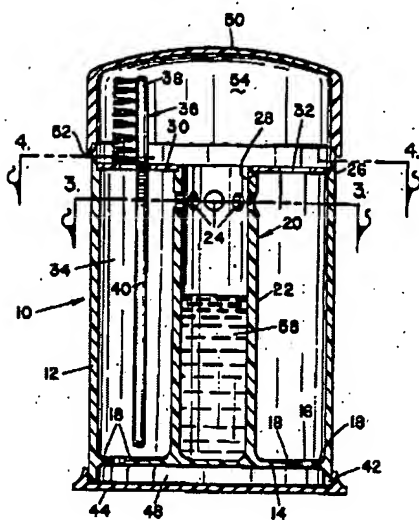
The lid 6 of Wilkinson has a downward flange to cover the dental appliances. However, the lid does not have a gripping portion formed therewith. Collins evidences a toothbrush container having a gripping portion 11 on the lid 10. See Figure 1. As Collins teaches that the

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gripping portion 11 permits the lid to be "readily applied and removed" (page 1, lines 69-70), it would have been an obvious modification to the lid 6 of Wilkinson.

7. Claims 1, 3, and 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Duke (U.S. 3,881,868) in view of Collins.

With respect to claims 1 and 3, Duke teaches a toothbrush holder and sterilizer 10 including a vase type container 12 having a flat lower surface 44 and an upper opening. A



sterilization container 22 is suspended in the upper opening. A generally horizontal extension 30 between the upper opening and the sterilization container includes holes 32 for suspending toothbrushes. Lid 50 seals the sterilization container 22 and covers the toothbrushes 36 with a downward flange. The sterilization container 22 of Duke is not disclosed to be removable. Not does Duke teach allowing fresh air to circulate with the container.

With respect to fabricating the device of Duke such that the container 22 is removable, it has been held that the "mere fact that a given structure is integral, does not preclude its consisting of various elements." See *Nerwin v. Erlichman*, 168 USPQ 177, 179 (PTO Bd. of Int. 1969). Moreover, as providing a removable container 22 would permit easier refilling and cleaning thereof, it would have been obvious to fabricate the device of Duke such that the container 22 is removable.

Collins discloses a toothbrush holder wherein the lid 10 includes apertures 9 therein.

Collins teaches that the apertures allow water vapor from the bristles of the toothbrushes as well

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as vapor from sterilant 16 to circulate and escape from the container. See page 1, lines 77-93.

As this circulation will speed drying of the bristles, as well as encourage contact of the sterilant vapors with the container inner surfaces, it would have been obvious to provide apertures in the lid of Duke.

As to claim 6, with respect to the material from which the container and lid are formed, it is generally accepted to be obvious to one of ordinary skill in the art to choose an appropriate and well-known material, where the results are not unexpected. One would have found it obvious to choose hand-blown glass for purposes of aesthetics and ease of cleaning.

With respect to claims 7 and 8, the lid 50 of Duke has a downward flange to cover the toothbrush. However, the lid does not have a gripping portion formed therewith. Collins evidences a toothbrush container having a gripping portion 11 on the lid 10. See Figure 1. As Collins teaches that the gripping portion 11 permits the lid to be "readily applied and removed" (page 1, lines 69-70), it would have been an obvious modification to the lid 50 of Duke.

Allowable Subject Matter

8. Claims 4 and 5 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

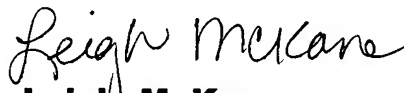
9. The following is a statement of reasons for the indication of allowable subject matter: Neither Wilkinson nor Duke teach or suggest an apparatus wherein an upper rim of the bath container holds the lid above the vase type container, thereby allowing fresh air to the dental appliances.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leigh McKane whose telephone number is 571-272-1275. The examiner can normally be reached on Monday-Wednesday (5:30 am-3:00 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Kim can be reached on 571-272-1142. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Leigh McKane
Primary Examiner
Art Unit 1744

elm
29 August 2005